IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/12/2003

Coram

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice M.THANIKACHALAM

Crl. Appeal No.1002 of 1995

1.Ramachandran
2.Govindaraj
3.Saravanan @ Saravanakumar .. Appellants

-Vs-

State by Inspector of Police,
Manapparai Police Station,
Trichy District.
(Crime No.396/94) .. Respondent

Criminal Appeal preferred against the judgment dated 11.11.1995 made in S.C.No.89 of 1995 on the file of the Principal Sessions Judge, Trichirappalli.

!For Appellants .. Mr.S.Shanmuga Velayutham

^For Respondent .. Mr.V.Arul,
Govt. Advocate (Crl. Side)

:JUDGMENT

M.THANIKACHALAM, J.

The accused 1 to 3 in S.C.No.89 of 1995 on the file of Principal Sessions Judge, Tiruchirappalli Sessions Division are the appellants.

2.The respondent/complainant, filed a final report against the appellants/accused 1 to 3 and two others, seeking conviction for the offence said to have been committed by them, under Section 120-B r/w 449 IPC, 449 r/w 34 IPC and 302 r/w 114 IPC on the ground, that they have conspired together to commit dacoity in the house of one Palaniappa Chettiar on 24.11.1994 at about 07.00 a.m. in the house of the fifth accused, that in pursuance of the conspiracy hatched, the accused 1 to 3 trespassed into the house of Palaniappa Chettiar in order to commit dacoity on 25.11.1994 at about 01.30 p.m.; that too with an intention to commit murder if there was a resistance and that they have committed the murder of Palaniappa Chettiar, by strangulating him using a rope thereby caused his death and in this view, all are liable to be convicted

under the appropriate provisions of law.

3.Upon considering all the materials placed before the Principal Sessions Judge, Tiruchirappalli, he formed an opinion that there are materials to frame charges, and to proceed further. In this view, framing charges against all the accused, he questioned them, explaining the nature of offences, for which all the accused have pleaded not guilty, thereby compelling the prosecution to take the burden of proof, on their shoulders.

4. The complainant in order to make out a case as framed against all the accused, marched in 18 witnesses armed with 23 documents, supported by five material objects. To nullify the effect of the above evidence, if any, on behalf of the accused, five witnesses were examined seeking support from five documents.

5. The learned Principal Sessions Judge, Tiruchirappalli, on a consideration of the above materials and scanning the same in accordance with the well laid principles of law, came to the conclusion, that the prosecution has miserably failed to prove the conspiracy and in this view, acquitted A-4 and A-5. But, the assessment of the materials further revealed the offence reported against A-1 to A-3, and therefore he convicted the accused appellants 1 to 3. A1 is convicted under Section 449 IPC and sentenced to suffer rigorous imprisonment for five years, and life imprisonment under Section 114 r/w 302 IPC. The accused 2 and 3 were found guilty under Sections 449 and 302 IPC jointly, and they were convicted and sentenced to undergo rigorous imprisonment for five years, for the offence under Section 449 IPC in addition to life imprisonment for the offence under Section 302 IPC ordering the sentence to run concurrently.

6. The prosecution case, in brief, necessary to decide the case is as follows:

(i)Thiru.Muthiah (P.W.11) is the son of Palaniappa Chettiar. Palaniappa Chettiar a Pawn Broker by profession was residing at Ramaswamy Street, Manapparai. P.W.1 by name Selvam and P.W.6 by name Arivuselvam are residing opposite to the house of Palaniappa Chettiar, in the same street. The accused 1 to 5 have hatched the conspiracy, on 24.11.19 94 at about 07.00 p.m. in the house of A-5, at Tiruchirappalli to commit dacoity in the house of Palaniappa Chettiar, if resisted, followed by murder also.

(ii)On 25.11.1994 at about 01.30 p.m., P.W.1 and his son were sitting in their house, discussing their family matters. Hearing some noise in the house of Palaniappa Chettiar, they went there, knocked the door, but there was no response. Hearing the noise, P.W.3, a worker in a Mill, who came on the way and P.W.4, a Painter by profession who came through that street, P.W.5 as well as P.W.6, joined with P.W.1. Despite their knocking the door, there was no response, but all of them heard some noise inside the house. Suspecting some thing is going on inside the house, all of them ran towards south, turned towards the lane and peeped through the window. To their surprise, P.Ws.1 and 3 to 5 witnessed the accused 2 and 3, strangulating the neck of Palaniappa

Chettiar by a rope, while the first accused caught hold of him. Because of the strangulation, blood oozed from the mouth of Palaniappa Chettiar. By the hue and cry of the witnesses, the accused attempted to escape from the scene of crime.

(iii)On seeing, that the accused are attempting to escape, P.Ws.1 and 3 to 5 chased them, but failed to apprehend A-2 and A-3, since they scaled the compound wall and vanished from their eyes, which was witnessed by P.W.6 also. P.W.1 while chasing the accused fell down, and sustained some injuries also. All the above said witnesses unable to apprehend the accused, then went inside and noticed that Palaniappa Chettiar was murdered, and the nearby bathroom was locked inside. Apprehending that there may be somebody inside, one of the witnesses sat there, in order to prevent the escape of any other accused, if inside.

(iv)P.W.1 immediately rushed to the police and narrated the incident, which he had seen, which was reduced into writing as Ex.P-1 by P.W.18, the Inspector of Police, Manapparai Police Station at about 02.30 p.m. on the same day i.e. 25.11.1994. On the basis of Ex.P-1, P.W.18 registered a case under Section 302 IPC, in Crime No.396 of 1994 for which he submitted the printed F.I.R. Ex.P-18 to the Court concerned, through P.W.16.

(v)By taking up the case for investigation, P.W.18 rushed to the scene of crime at about 04.30 p.m. on 25.11.1994, noticed that the bathroom was locked inside. As tapping for opening has not yielded any result, P.W.18 opened the door forcibly and saw the first accused, who surrendered before the Inspector. Later he was remanded to custody.

(vi)Between 06.30 p.m. and 10.30 p.m., P.W.18 conducted inquest in the presence of panchayatdars and also examined eye witnesses, and the result is Ex.P-10. During the investigation at 06.30 p.m., in the presence of P.Ws.4 and 5, he prepared the Observation Mahazar Ex.P2, as well as the Sketch Ex.P20. In addition, he recovered M.O.1 under Ex.P3. After examining the available witnesses, P.W.18 made arrangement for autopsy through P.W.17 under the request Ex.P21.

(vii)Dr.Sridhar (P.W.14) on receipt of the requisition Ex.P-21 and upon identification of the body of Palaniappa Chettiar by P.W.17, conducted the autopsy at about 10.00 a.m. on 26.11.1994 which revealed the following external as well as internal injuries:

External:

1.Ligature mark 1/2cm width. It runs horizontally from the front of the neck just above the Thyroid Cartilage encircling right side, back and left side of the neck and then to the front of the neck. The impression of the ligature knots could be visualised at the centre of the back of the neck. The base of the ligature mark is pale. Edges of the ligature mark is ecchymosed.

2.Abrasion of 2cm over right knee.

3.Three abrasions of varying sizes over left leg below knee.

Internal:

Underlying subcutaneous tissue of ligature mark during exploration contains dark coloured fluid blood.

Hyoid: Fracture of right side horn at its junction with the body.

Trachea and Larynx: Intact and inner surface is congested.

Tongue: Bite teeth marks present over anterior 1/3 of the tongue.

Ribs: Intact.

Lungs: Highly distended and congested. On cut section dark coloured blood seen.

Heart: Cavity contains about 10ml of dark coloured blood.

Carotid: Sheeth, ruptured both sides.

Abdomen, Liver, Spleen, Kidneys: Congested.

Stomach: Contains partially digested food particles about 500 gms.

Intestines: Congested, distended & filled with gas.

Bladder: Empty

Testes: Normal

Head: Scalp intact. Reninges intact; congested. Brain intact. Congested. Base of the skull intact. Cervical vertebra intact.

(vii)The Doctor preserving the Hyoid Bone, sent it for pathological report. Pending pathological report of Hyoid Bone, he opined incorporating the injuries in Ex.P-16, that the deceased would appear to have died 20-22 hours prior to autopsy. Ex.P-14 disclosed contusion of soft tissues at the junction of right greater horn with the body (ante mortem) as well as postmortem dislocation of both greater horns. P.W.1 was subjected to medical examination during investigation and the Doctor P.W.13 who examined P.W.1 had noted eight injuries, out of which seven are simple in nature and one is a grievous injury, under Ex.P-15.

(ix)P.W.18 in continuation of the investigation examined other

witnesses, recorded their statements, then and there. He arrested the first accused on 25.11.1994 and accused 3 and 4 on 29.11.1994. On the basis of the confession given by A-3 and A-4, M.O.2 and M.O.3 and Exs.P-7 and P-8 were recovered from them. In the mean time, the second accused surrendered on 05.12.1994 itself before the Judicial Magistrate. After the arrest, in order to fix the person, who had committed the crime, test identification parade was conducted by P.W.15 at the request of P.W.18, under Ex.P-22.

(x)Thiru.P.T.Loganathan, then Judicial Magistrate No.II, Kulithalai on receipt of the request from the Investigating Officer, addressing the jail authorities conducted a test identification parade on 09.01.1995, at about 03.30 p.m. in the Central Pr , Tiruchirappalli, where P.Ws.1 and 3 to 5 have identified the accused 1 to 3 correctly and the result is incorporated in Ex.P-17. The evidence collected by P. W.18, by the examination of the witnesses and other attending circumstances brought to surface, the guilt of the accused as per the opinion of the Investigating Officer, and the result was the final report, leading to the conviction of the accused, after trial as aforementioned, which is under challenge before us.

(xi)This appeal is targeted against the above said conviction and sentence, since the convicted accused have felt, that there were no materials warranting conviction, on various grounds.

7. Heard Mr.S.Shanmuga Velayutham, learned counsel appearing for the appellants and Mr.Arul, learned Government Advocate appearing for the respondent.

8. Learned counsel appearing for the appellants submits that the conviction and sentence are not sustainable, on the following grounds viz., 1.that the alleged eye witnesses viz., P.Ws.1, 3, 4 and 5 are strangers to the accused and therefore, there would not have been any possibility for them, to identify the accused at the time of the alleged incident, followed by the identification before the Court;

2.that in the F.I.R. itself, it is not the case of the alleged eye witnesses that the accused are known to them or at least, capable of identification on seeing;

3.that there was no proper identification in the sense, the identification parade was not conducted by the Judicial Magistrate in time and properly also and therefore, on the basis of the alleged identification before the Judicial Magistrate, fixing the appellants as accused, is also not within the reach of the arms of law; and

4. that there is no final opinion regarding the cause for the death of Palaniappa Chettiar that is in the sense it is not proved it is a homicidal violence.

Elaborating further, the learned counsel contended that the trial Court has failed to take into note, the above factors, which should certainly

cause abrasion over the prosecution case at least creating a reasonable benefit of doubt, which should go to the accused under the normal criminal jurisprudence, clearing the way for acquittal.

9. The learned Government Advocate opposing the above contentions, would submit that the fact P.Ws.1 and 3 to 5 are eye witnesses could not be disputed and therefore, the trial Court has found their evidence worthy of acceptance and the same cannot be erased. He further points out that the eye witnesses have seen the accused at the time of occurrence, since it took place during day light and therefore, it is possible for them to identify before the Judicial Magistrate, though it is belated. He further pointed out, that the opinion given by the Doctor regarding the cause of death in the Cou rt, is not questioned or challenged and therefore, it is too late for the learned counsel for the accused to question the cause of the death of Palaniappa Chettiar.

10. It is also the further submission of the learned Government Advocate, that at the time of the occurrence, admittedly, the defacto complainant viz., P.W.1 also had no knowledge about the names and particulars of the accused and therefore, the non-mentioning of the same in the F.I.R. would not in any way affect the case of the prosecution, since it has been established beyond all reasonable doubts, by unimpeachable evidence. Thus, he supported the reasonings and findings of the sessions Court, convicting and sentencing the accused, as aforesaid and prayed for confirmation of sentence and dismissal of the appeal.

11. In order to appreciate the facts in issue and the controversy as well as the rival contentions raised on behalf of the parties, we have to remember the location of scene of crime, the time of incident, in addition to the residence of some of the eye witnesses.

12. Admittedly, P.Ws.1 and 6 are residing just opposite to the house of the deceased. P.W.1 hearing some noise came out and saw the incident first, whereas P.W.6 had seen the incident, only later point of time. P.W.1 has no animosity against the accused and in fact even according to the defence, he is not so close with the deceased. In fact, it is suggested, that P.W.1 had some animosity against the deceased. In this view, the oral evidence of P.W.1, takes the place of credibility and the same could not be ignored. To presume or infer that P.W.1 is deposing against the accused, in order to escape from the criminality said to have been committed by him, there is no iota of evidence. P.Ws.3 to 5 have no axe to grind against the accused, and in fact, they are also not in any way connected either with P.W.1 or the deceased. In fact, one is a mill worker and another is a painter and another is an Electrician (P.W.5). During the cross-examination, nothing is concretely elicited from these witnesses, to doubt their oral testimony such as it should be motivated or it should be out of fear for the police or due to affection towards the deceased etc., In the absence of any materials to doubt about the presence and genuineness of these eye witnesses, we are inclined to hold that they might have seen the incident and that is why, they have appeared before the Investigating Officer, gave the statements, regarding the facts, what they have seen which was testified later on before the Court also.

13. The learned counsel appearing for the accused is also unable to

point out any acceptable materials, in order to say clinchingly, that their evidence are not worthy acceptance and they should be ignored or eschewed as unacceptable, at least on the basis of improbability. In this view, the conclusion of the learned sessions Judge, has to be confirmed, without interference, regarding their witnessing the incident whether the evidence given by them, makes out a case or not, which we will discuss infra.

14. The law was set in motion, on the basis of Ex.P-1 given by P.W.1 . As rightly pointed out by the learned counsel for the appellants, it does not contain the names of the accused. We could not find any fault, because of the admitted fact, that it is not the case of the prosecution that accused are already known to P.W.1, by name or otherwise. In Ex.P-1, it is stated that P.W.1 has seen three persons inside the house of Palaniappa Chettiar; two persons were using rope to strangulate the deceased, whereas another person caught hold of him from behind. The fact, P.W.1 has not given the identification mark or failed to say that he could identify the accused on seeing, would in our opinion, not to cause any cloud over Ex.P-1, to view the same doubtfully. Immediately thereto, as seen from the evidence available on record, Ex.P-1 complaint was given by P.W.1. He would have recorded the image of the accused but in a natural way, he has preferred this complaint without disclosing the same. We do not find any infirmity in the non-mentioning of the names of the accused, or the particulars regarding the identification, that too in view of the fact that the incident had taken place at about 01.30 p.m. At that point of time, one could clearly see a person, who committed the offence and retain his image also in the mind, for reproduction at later point of time. The incident took place at about 01.30 p.m. and complaint was preferred at 02 .30 p.m. On the same day, printed F.I.R. reached the Court without undue delay. In Ex.P-1, the witnesses's names have been specifically stated, including the narration of the incident viz., hearing the noise inside the house of Palaniappa Chettiar, seeing through window, and the actual act of the persons etc. Considering the absence of any delay, a reasonable inference could be drawn is that Ex.P-1 does not contain any imaginary averments, invented against the culprits, whereas it should be held, that it does contain the particulars, which the witnesses have seen and in this view it should be accepted as it is. The trial Court considering this fact, accepted and acted upon Ex.P-1 since it was corroborated by the witnesses also, and we do not find any error either on facts or on law.

15. The learned counsel for the appellants submits, that the prosecution has failed to prove the cause for the death of Palaniappa Chettiar. We are unable to agree with this contention, considering the unquestionable oral evidence of P.W.14. True, as seen from Ex.P-16, no final opinion was given or obtained regarding the cause of death of Palaniappa Chettiar. Ex.P-16 does not say, what is the cause of death of Palaniappa Chettiar, though it reads, the deceased would appear to have died 20-22 hours prior to autopsy. The Hyoid Bone sent for examination also revealed ante-mortem contusion, thereby indicating that at the time of strangulation alone, that kind of contusion of soft tissues at the junction of the right greater horn could have been occurred. The Doctor, who conducted the postmortem, who had seen the report, though failed to give any final opinion whether it is due to inadvertence of the Investigating Officer or not, has

opined before the Court that the deceased would have died only due to strangulation and not by committing suicide. In fact, only during the cross-examination, reasons were elicited from P.W.14, narrating unassailable reasons, to come to the conclusion of homicidal violence. The Doctor had noticed knot impression on the back side of the neck as well, on internal examination noticed fracture of right side horn at its junction with the body. Further, he has noticed, at the time of the autopsy, oozing of blood from the nostrils, ear and damage to trachea etc. On the basis of the symptoms, he was of the strong opinion that death would have occurred to Palaniappa Chettiar, only by asphyxia due to strangulation not by hanging himself. The oral evidence of P.W.14, not only rules out the theory of hanging, but also proves that the death was due to asphyxia by strangulation. Because of the only reason, that final opinion was not obtained regarding the cause of death by the Investigating Officer, before laying the final report, we are unable to ignore the oral evidence of P.W.14, which is inspiring and unchallenged. In this view, we conclude, that Palaniappa Chettiyar died only due to homicidal violence and not suicide. Thus, fixing the cause of death of Palaniappa Chettiar, we have to find out, who did this strangulation and the effect of the same.

16. The main thrust of the learned counsel for the appellants is, that P.Ws.1 and 3 to 5 would not have seen the occurrence and their identification of the accused before the Judicial Magistrate is valueless, because of the fact it was not immediately conducted, based on certain judicial precedent. The incident took place on 25.11.1994, at about 01.30 p.m. during day time. Test identification parade was conducted by P.W.15 only on 09.01.1995 i.e. after 44 days. Therefore, according to the learned counsel for the appellants, the alleged eye witnesses, would not have identified the accused, since it is their case that they have seen the accused only once, for few minutes or so. It is the further submission of the learned counsel for the appellants, that the Judicial Magistrate has not properly conducted the identification parade, since he failed to question the accused, before conducting identification parade, such as, whether the witnesses were shown to them or not.

17. All the above witnesses, which we will discuss infra, have categorically deposed without giving a chance for doubt, that they have seen all the accused in the dining hall of the Palaniappa Chettiar's house at about 01.30 p.m., when the occurrence had taken place. When the witnesses have seen the occurrence during day time, the question of identification at later point of time, may not have much significance, because of the fact, the witnesses might have seen the assailants perfectly in the day light. If it is the case of an incident having taken place during night hours, or where there was no feasibility of the witness to see the assailants clearly, then question of identification would take predominant role, that too, in the absence of proper test identification parade. Here, the incident had taken place at about 01.30 p.m. and the witnesses had every chance to see the assailants, perfectly and therefore, later on, even identifying the accused before the Court, would not in our view, create any doubt, in the case of the prosecution even in the absence of Test Identification Parade. The position being so, delayed test

identification parade conducted in this case, could not be treated as valuele ss, as alleged by the learned counsel for the appellants. The question of identification would depend upon the intelligence of the witnesses, their mind set up, their viewing the incident, availability of the light, the impression they received and recorded in the mind and their mental capacity for reproduction at later point of time, whether it is on the next day or some time later on. If a crime is noticed, being a special occasion, the mind will be so alert, for some people to catch the figure and print and therefore, if they have identified the person, at a later point of time, after two months or so, only on the basis of the delayed identification, we feel doubting about their credibility, is beyond imagination. In this case, it is not the case of the defence, that there was no light or no possibility of identifying the accused etc., and their case appears to be, that P.Ws.1 and 3 to 5 have not at all seen the occurrence. In this context, we have to see the defence also.

18. It is suggested to P.Ws.1 and 3 to 5, that the accused were shown to the witnesses, just one day prior to the test identification parade, at Manapparai Police Station. Admittedly, the accused were not in the custody of Manapparai Police Station, and in fact they were in the judicial custody, in Central Prison, Tiruchirappalli. Therefore, there would not have been any possibility for the Investigating Officer, to take the prisoners from Central Prison, Tiruchirappalli, to his Police Station just one day prior to the identification parade, in order to show them to the witnesses. This suggestion would show that a desperate attempt was made, to make the test identification parade nullity, since all the witnesses have perfectly identified the accused, before the Judicial Magistrate, whose proceedings we are unable to doubt. It is not the case of the defence, that the witnesses were brought to Central Prison and the accused were shown to them. It is also not the case of the defence, that the photos of the accused were published and the witnesses had a chance of seeing the photos, then later on identifying them, even without seeing them at the scene of crime. It is not the further case of the defence, that the photos of the accused were taken in order to show, to the witnesses etc. Thus viewing from the defence side also, we are unable to doubt, about the test identification parade and proceedings and the actual identification of the accused by the witnesses. After 44 days, identification parade was conducted. The witnesses have seen the accused in the day light, though inside the room, and having that remembrance of the figure, while they were strangulating the deceased, later while two accused were running, it is possible for anyone, to identify those persons, at later point of time. In fact, in our view, in this case, no test identification need be conducted, because the witnesses have actually seen the accused, by face and figure etc., Only as precautionary measure, test identification was also conducted, confirming the identity of the accused. In this view, we are unable to entertain any doubt, in the test identification parade, or in our considered opinion test identification parade viz., Ex.P-17 could not be described as valueless.

19. As contemplated under Section 9 of the Indian Evidence Act, the fact of identity of the person is relevant to say that he should have involved in the offence. On the basis of Section 9 alone, the identity of the accused takes importance, thought it forms part of investigation, not being

substantial evidence. The learned counsel for the appellants would contend, that the witnesses had, if at all only little opportunity to see the face of the culprit and therefore the subsequent identification must be an imagination, placing reliance on the decision reported in Girja Shankar Misra Vs. State of U.P.(1994 SCC (Cri) 214) wherein, the Apex Court has observed that if the witnesses have not mentioned the special features of miscreants before the police, the possibility of accused having been shown to the witnesses not ruled out and in that view, no reliance could be placed on such identification.

20. In the case involved in the above decision, it seems, that the incident had taken place nearly about sunset, depriving the sufficient light, to see assailants and there were so many other discrepancies, in conducting the identification parade coupled, with severe delay. In this case, as aforementioned, the incident took place at about 01.30 p.m. and it is not the case of lit tle opportunity for the witnesses, to see the culprits whereas they had sufficient opportunity to fix the accused and identify them later also. In this view, in our opinion, the above ruling will not come to the aid of the accused, to escape from the clutches of law.

21. In Mahendra Singh Vs. State of U.P. (1991 Cri.L.J. 1381), the Apex Court has taken the view "no link evidence by prosecution to show that accused was not shown to any prosecution witness before the identification and the benefit of doubt could be given to the accused." The only suggestion put to the witnesses is, that the accused were shown to the witnesses in the police station which is ruled out and no other alternative case is also projected. Therefore, the contention of the learned counsel that in the absence of link evidence by prosecution, test identification parade is valueless is not acceptable one and this decision is also of no assistance, to the accused.

22. The learned counsel for the appellants submits that the delay in holding the identification parade is not satisfactorily explained and on that basis, the result of the test identification parade should lose its value. As aforementioned, the delay was 44 days, which is a normal one and no explanation also, in the facts and circumstances of the case, is necessary. Even ignoring the test identification parade, conducted by the Judicial Magistrate at the request of Investigating Officer, in this case, on the basis of the evidence given by the eye witnesses, if believable, that they might have seen the accused correctly at the time of the incident, would not prevent the Court from convicting the accused, because of the fact that the incident had taken place during day light, having sufficient light also, for seeing the accused perfectly.

23. Conducting an identification parade is a part of the investigation and it belongs to the realm of the investigating agency, the further fact being, it is not a substantial evidence. Therefore, generally, only on the basis of the delay, identification parade could not be ignored. By the delay caused, if it is shown that the witnesses would not have remembered the accused, or if it is shown that taking advantage of the delay, the accused were shown to the witnesses, in order to identify, at a later

point of time, then only in our opinion, the delay will take its role, to eclipse the evidentiary value of the identification parade. In this case, as aforementioned, the incident had taken place during the day light and the witnesses had every opportunity to see the accused and remember their figure, in their mind and therefore, we are satisfied that the delay is immaterial in this case. In this view, we have to scan the ocular evidence and its effect, in order to fix the culpability of the accused.

24. P.W.18 has given evidence unassailably, regarding the registration of the case, as per the complaint given by P.W.1 on 25.11.1994 itself at about 2.30 p.m., on which basis, the case was registered, commencing investigation, without any delay. It is the specific case of P.W.18, the investigating officer, that he went to the scene of crime at about 4.15 p.m. on the same day, and apprehended the first accused, who was inside the bathroom of Palaniappa Chettiar's house, in the presence of the witnesses. The case spoken by P.W.1 regarding the arrest of the first accused, is not challenged effectively. On the basis of the confession given by the first accused and as the investigation revealed, he arrested the third accused on 29.11.1994. Apprehending arrest and probably some harassment in the hands of the police, on 5.12.1994, the second accused surrendered, before the Court. It is the further case of P.W.18 that on the basis of the confession given by the third accused, he recovered some property, but the same has nothing to do with this case. The arrest of the first accused, at the scene of crime, followed by the arrest of other accused and their identification by the eyewitnesses, make it abundantly clear, that the investigating agency had not committed any laches, causing any abrasion to the prosecution case. We are fully satisfied regarding the evidence available on record, to sustain the conviction against all the three accused.

25. It is the case of the prosecution that the witnesses have seen the occurrence or incident, through the window. Therefore, first we have to see whether there was a window in the dining hall of the deceased Palaniappa Chettiar's house, enabling the witnesses, to see the occurrence. Ex.P20 sketch would indicate the existence of a window, on the southern wall of the building where the occurrence took place. The Observation Mahazar Ex.P2 says, that in the room where the incident had taken place, there is a window, having four doors and one door is open. All the witnesses have categorically deposed, about the existence of the window, on the southern side of the room, where the incident had taken place except P.W.5. P.W.5 would state that on the southern wall of the Palaniappa chettiar's house, there were three windows, which is not the case of the other witnesses. The other witnesses have restricted about the window, regarding the dining hall alone. Therefore, this discrepancy, ordinary in nature, would not weaken the prosecution case. The Investigating Officer also has spoken about the Observation Mahazar, not questioned erasably. Thus accepting the oral evidence of P.Ws.1 and 3 to 5 and Investigating Officer, we conclude that there was a window on the southern wall side of the room where the incident had taken place and there is every possibility, for the witnesses to view the occurrence, through the said window, since there is a lane on the south side of the Palaniappa Chettiar's house, admittedly, and as proved by the oral evidence.

26. In order to appreciate the oral evidence of P.Ws.1 and 3 to 5 we have to see, the defence also though it is not the burden of the accused, to prove his innocence, generally. It is suggested to P.W.1, that due to debt problem, there was a wordy altercation between P.W.1 and the deceased and later on, the deceased unable to bear the torture, committed suicide. While discussing the evidence of the Doctor, we had come to the positive conclusion, that Palaniappa Chettiar had not committed suicide, whereas it is only a homicidal violence. There is no evidence, except some casual suggestions, to the witnesses even to infer at least that P.W.1 had quarrel with the deceased Palaniappa Chettiar, thereby causing depression to his mind, leading to suicide. In this view and on the basis of scientific evidence available, regarding the strangulation, we would rather reject the defence.

27. P.Ws.1, 3 and 4 have categorically deposed about the hearing of the noise, in the house of Palaniappa Chettiar, then knocking the door without response. It is the assertion of P.W.1, that at that time P.Ws.3 to 5 have also come there which is corroborated by them. According to him, they were unable to open the front door, then and they went on the southern side, where there is a lane and saw the incident through a window. He would state further, that Palaniappa Chettiar was in a standing position caught hold of by the first accused, while the accused 2 and 3 tying M.O.1 rope around the neck, pulled in opposite direction, as a result of which blood was oozing from the mouth of the victim. He would state further, that on their shouting, accused 2 and 3 scaled over the compound wall of Palaniappa Chettiar's house, and they were not able to catch them despite their chase. It is the specific evidence of P.W.1 that in that process, he fell down and sustained injuries which is spoken by the Investigating Officer, as evidenced by P.W.13's evidence also. The fact P.W.1 sustained injuries on the same day also, would indicate that only on seeing the accused, P.W.1 along with others would have chased them, fell down, failed in their attempt, thereby probabilising the case of P.W.1, being the eye witnesses coupled with P.Ws.3 to 5.

28. P.W.3 has categorically spoken, that he entered into the house of Palaniappa Chettiar through back door and opened the front door and thereafter noticed the bathroom locked inside. P.Ws.1 and 3 to 5 have specifically given evidence, regarding the surrender of the first accused, who was inside the bathroom, after the arrival of the Investigating Officer, on opening the door forcibly or otherwise, which is also confirmed by the Investigating Officer, P.W.18. The witnesses have also accounted about the knot of the rope, on the back side of the neck, thereby ruling out the suicide theory. We do not find any reason to ignore the oral evidence of P.Ws.1 and 3 to 5, who have identified the accused, not only before the Court, but also before the Judicial Magistrate because of the fact, that they have seen the accused, at the time of occurrence, during day light, and accepting the same as did by the trial Court, we conclude that the accused 2 and 3, using the rope M.O.1 which was identified by all the witnesses, had strangulated Palaniappa Chettiar while the first accused was caught hold of him. Thus, all the three should be held, for the death of Palaniappa Chettiar which comes within the meaning of murder.

29. The learned Trial Judge very elaborately, considering the materials available on record, came to the conclusion, that no case is made out against A4 and A5 whereas the charges against the remaining accused are proved beyond all reasonable doubt, based on reasons as well as supported by legal position, not warranting any interference. In this view, we conclude the appeal is devoid of merits and liable to the dismissed.

30. The conviction and sentence of the accused are maintained and the criminal appeal is dismissed. All the accused/appellants are directed to surrender before the trial Court and their bail bonds shall stand cancelled and sureties shall stand discharged on their surrender. They will be taken to custody forthwith to serve out the sentence, for that the trial Court is directed to take steps.

Index:Yes
Website:Yes

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To

1.The Judicial Magistrate, Manapparai,
Tiruchirappalli.

2.-do- through the Chief Judicial
Magistrate, Tiruchirappalli.

3.The Principal Sessions Judge, Tiruchirappalli.

4.The Superintendent, Central Prison,
Tiruchirappalli.

5.The Public Prosecutor,
High Court, Madras.

6.The Inspector of Police,
Manapparai Police Station,
Tiruchirappalli.

7.The District Collector,
Trichy District.

8.The Director General of Police,
Mylapore, Madras - 4.